

Dear Fellow Montanan:

Someday you may want to take someone to a small claims court in order to settle a dispute that involves \$2,500 or less. Or someone may take **you** to the small claims court. In either case, you will need to know how the small claims court works, since you may decide not to hire a lawyer.

This pamphlet has been prepared to show you how to use the small claims court in your community. It defines legal terms and explains who can sue in a small claims court, what kinds of cases a small claims court handles, and the proper procedures for bringing a case. I know you will find this information helpful if you ever go to small claims court.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

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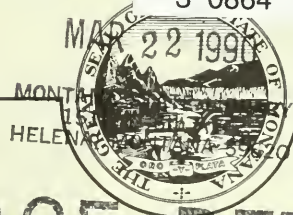
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SMALL CLAIMS COURT

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A Citizen's Guide

prepared by

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SMALL CLAIMS COURT

I. WHAT IS A SMALL CLAIMS COURT?

A small claims court is a court where disputes between persons over small amounts of money or personal property can be decided quickly, inexpensively, and informally. These courts are divisions of the Justice of Peace Court in each county. Juries and lawyers are not necessary, and there are no involved and lengthy formalities.

II. WHO CAN SUE OR BE SUED IN SMALL CLAIMS COURT?

In small claims court you can sue, or be sued, by an individual, a partnership, a corporation, a union, an association, or any other kind of organization or entity, except the state or a state agency.

If you are the person suing, you are the plaintiff. The plaintiff must be the person to whom the money or property claimed is actually owed, or the person trying to determine who is entitled to the funds in dispute. An assignee cannot be plaintiff in small claims court. If you are the person being sued, you are the defendant.

If you are suing a corporation, use its correct legal name. This can be obtained by calling the Montana Secretary of State's office, State Capitol, Helena, Montana 59620 (444-2034). If you are suing a married individual, you may wish to sue both the husband and the wife in appropriate cases so that you can collect from jointly owned property.

III. WHAT KIND OF CASE CAN YOU TAKE TO SMALL CLAIMS COURT?

You may take three kinds of cases to small claims court. You may sue in small claims court if you claim that another person owes you a sum of money, which cannot be more than \$2500. You may sue in small claims court if you claim that another person has personal property belonging to you worth up to \$2500. Whether you sue to recover money or personal property, the limit is \$2500. The small claims court also is the proper place to bring an "interpleader" action involving \$2500 or less. Interpleader actions are brought by a disinterested party, such as an insurance company, to deter-

mine the rights of rival parties who all claim they are entitled to the funds held by the disinterested party.

You must file your complaint in a county where the defendant can be served with the complaint. Usually, this is where the defendant lives or has a place of business.

IV. COUNTERCLAIM.

If you are the defendant in a small claims action, and you believe plaintiff owes **you** some money or personal property, you may file a counterclaim. A counterclaim must arise out of the same transaction as the plaintiff's complaint. For example, if the plaintiff sues claiming that you drove into his car and owe him money for damages to his car, you can counterclaim for the damage done to **your** car if you believe the collision was the plaintiff's fault, not yours. You must file a counterclaim with the small claims court and have it served upon the plaintiff more than 72 hours before the scheduled date of the trial. The small claims court office will provide a counterclaim form. When you file a counterclaim, you must pay the clerk a filing fee. You may file a counterclaim even if you admit that you owe the plaintiff some or all of the money he claims from you. Your counterclaim cannot exceed the \$2500 limit.

V. ATTORNEYS.

A party may not be represented by an attorney in small claims court unless all parties are represented by attorneys. However, you may wish to talk with an attorney before filing a complaint or appearing in court as a defendant to find out if there is a legal basis for your position.

If you are the defendant and wish to be represented by an attorney or to request a jury trial, the law allows you to remove the case from small claims court to justice court by filing a notice of removal.

When a defendant removes a case to justice court, the plaintiff can either represent himself or hire an attorney. If the plaintiff hires an attorney and the defendant loses the case in justice court, the court may make the defendant pay the plaintiff's attorney fees.

VI. HOW TO PROCEED.

A. Plaintiff.

Before filing a complaint, it is recommended that you send a letter by certified mail to the

person you wish to sue. In the letter, state the problem and demand payment within 10 days or other specified time. If the person refuses the letter or if he doesn't pay within the time stated in the letter, you should file your claim. Bring your proof of mailing of the letter with you to court, both when you file your claim and if you go to trial. The letter is your proof that you have demanded payment from the defendant.

To file a complaint, you must appear before the justice of the peace or his clerk and execute a sworn small claims complaint. The judge or court clerk will provide a complaint form and help you fill it out, but they cannot give you legal advice. On the form, state why you are suing, the amount you are suing for, and the facts of your case. Give the correct and complete name and street address of the person you are suing. A post office box number is not sufficient.

When you file a complaint, you must pay the clerk a filing fee. The person who wins the case can recover filing and service costs from the other party. If the defendant removes the case to justice court, you will not have to fill out another complaint form or pay another filing fee.

After the complaint is filed, the judge will set a time and date for the trial and order the defendant to appear on that date. The sheriff or constable will serve this order on the defendant. The hearing date will be from 10 to 40 days after the date of the order. The order must be served on the defendant at least 5 days before the hearing date. You can request the judge to reset the hearing for a more convenient time, but only if necessary.

If the defendant removes the case to justice court, he will probably have an attorney. You may hire an attorney too, but it is not required.

B. Defendant.

When someone files a claim against you, you are served with a copy of the complaint and an order to appear in court on the date of the hearing. At this point, there are several things you can do:

1. You can try to settle your differences with the plaintiff out of court.
2. You may file a counterclaim against the plaintiff.
3. You may contact the judge in small claims court and ask to have the trial

postponed to another date if you cannot be there or cannot be prepared on the scheduled date.

4. You can remove the case to justice court. To remove the case to justice court you must file a notice of removal in the small claims court within 10 days after you have been served with the complaint. If you do this, you may have an attorney represent you at trial and you can request a jury trial. If you do not remove the case to justice court within 10 days, you waive your right to an attorney and to jury trial. If you lose the case in justice court, the judge may order you to pay the plaintiff's attorney fees, if any.

5. If you do not do any of the above, you should go to court on the scheduled date of the trial. You must be there to present your side of the case if you do not wish a default to be taken against you.

You must pay the clerk of small claims court a fee either when you come in to file a counterclaim or when you appear in court for trial. If you win the case, you can recover this cost from the plaintiff.

VII. BEFORE TRIAL.

A. Settlement Out of Court.

If you reach an agreement out of court, get it in writing. Give a copy of your settlement agreement, signed by both parties, to the clerk of the small claims court, and ask that the complaint be dismissed.

B. Trial Preparation.

If you are not able to settle the case before trial, you should prepare to appear in court on the hearing date and present your case. Make sure you have all papers which relate to the case, such as receipts, bills, estimates, contracts, letters, canceled checks, officer's reports, and leases. Your case may require you to present photographs, articles of clothing, or diagrams. Contact the people you need to be your witnesses, explain your case, and make sure they will be at the trial on time.

C. Subpoena.

A subpoena is an order from the court requiring a person to come to court. If you think a necessary witness will not come to the trial at your request, ask the judge to subpoena that person. If the judge subpoenas a witness, you

must pay witness and service fees, but if you win the case, you can recover these costs.

D. Removal to Justice Court.

The defendant has the option to remove the case to justice court within 10 days after the complaint is served. That option is discussed above in Section VI.B.4.

VIII. IF YOU DO NOT APPEAR AT TRIAL.

A. Plaintiff.

If a trial date has been set and is not changed, you may lose your case if you do not come to the trial. The judge cannot enter a judgment for you unless you are present to give your testimony at trial.

B. Defendant.

If a trial date has been set and not changed, a default judgment may be entered against you if you do not come to the trial. This means that if you are not there to defend your position, the plaintiff can win the case in your absence.

IX. TRIAL.

A. Procedure.

Small claims courts operate informally. You may want to sit in on another case in the court where your case will be heard, just to see how the trial is conducted.

At the time of trial, the judge will place you under oath and ask you to tell the facts of your case. Facts should be presented in the order in which they happened.

First, the plaintiff tells his side of the case, presents evidence, and calls all his witnesses. It is then the defendant's turn to tell his side of the case, present evidence, and call witnesses. Each party may cross-examine the other party and his witnesses and ask questions about any evidence. After testimony, each side may make closing statements to sum up the case.

B. Proving Your Case.

As the plaintiff, you must prove the defendant caused some damage and owes you a specific amount of money as a result.

As the defendant, you should be prepared to prove that you do not owe the plaintiff what he claims. You can do this by showing that you did not cause the damage, or that the damage is less than the plaintiff claims, or that you have paid all that you owe to the plaintiff. If you are the defendant, you may also have a counterclaim against the plaintiff. If so, you must prove

that the plaintiff is the person at fault and that he owes **you** a specific amount of money.

In an interpleader action the plaintiff deposits with the court the money in dispute, and the defendants must prove that they are owed the money.

Prove your facts with evidence. You can use your own testimony, the other party's testimony, and other witnesses' testimony as evidence. You may also use any document, bill, diagram, photograph, police report, estimate of damages, or other objects related to the case as evidence to prove your case.

X. JUDGMENT.

A judgment is the written decision of the court. Upon conclusion of the case tried to the court, the judge shall make his findings and enter judgment. If you win the case, the judgment against the other side entitles you to collect from that person the amount of the judgment plus court costs. You must collect payment on your own. But if the losing party doesn't pay you, you can go back into the court and request a writ of execution. This is an order to the sheriff directing him to take money or specific personal property from the losing party to pay the judgment.

XI. APPEAL.

If you are not satisfied with the judgment of the small claims court you may appeal the case to the district court of the county where the judgment was tendered. The appeal must be in writing, served upon the other party, and filed at the small claims court within 10 days of the judgment. Within 30 days after the appeal is filed, the record of your trial, and the evidence, will be sent by the small claims court to the district court. You will be notified when this happens.

An appeal may be made only on questions of law. This means that you can appeal only if you believe the small claims court applied the law incorrectly in your case. The district court judge will not accept new evidence, witnesses or testimony. The case is not retried on appeal. The district court judge will only review the record that was made at the trial, view the evidence, and enter the judgment accordingly.

If the parties are represented by attorneys and one side appeals, the party who wins the appeal may be awarded reasonable attorney fees.

Information on appeal procedures and fees is available through the small claims court.